

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIAN LAMAR BROWN,

Petitioner,

vs.

ATTORNEY GENERAL FOR THE
STATE OF NEVADA AND ISIDRO
BACA, *et al.*,

Respondents.

Case No. 2:02-cv-00770-GMN-PAL

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner represented by counsel. On June 2, 2015, the United States Court of Appeals for the Ninth Circuit reversed this Court's judgment dismissing the petition and remanded with instructions that this Court rule on the merits of the properly exhausted claims in the original petition. (ECF No. 71). On July 23, 2015, this Court ordered respondents to file, within 45 days, an answer addressing the merits of the remaining exhausted grounds of the original petition. (ECF No. 76). Because no answer had been filed by September 8, 2015, the Court issued an order requiring respondents to show cause for their failure to file an answer in compliance with the Court's order. (ECF No. 77).

1 Respondents have filed a response to the order to show cause, a motion to file a late
2 pleading, and a motion for an extension in which to file answer. (ECF Nos. 78, 79, 80).¹ Pursuant
3 to Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure, the Court may extend the time in which
4 an act must be done to allow a late filing “if [a] party failed to act because of excusable neglect.”
5 To determine whether excusable neglect exists, the Court examines: “(1) danger of prejudice to the
6 non-moving party, (2) the length of delay and its potential impact on judicial proceedings, (3) the
7 reason for the delay, including whether it was within the reasonable control of the movant, and (4)
8 whether the moving party’s conduct was in good faith.” *Pincay v. Andrews*, 389 F.3d 853, 855 (9th
9 Cir. 2004) (citing *Pioneer Inv. Serv. Co. v. Brunswick Associates Ltd. P’ship*, 507 US. 380, 395
10 (1993)). In this case, there is little danger of prejudice to the opposing party. In fact, counsel for
11 respondents states that she has communicated with opposing counsel in the Federal Public
12 Defender’s Office, who has no objection to the request to file a late pleading or to the motion for an
13 extension of time to file an answer. The length of the delay is less than a month and will have little
14 impact on these judicial proceedings. The reason for the delay was a calendaring error within the
15 Office of the Nevada Attorney General. Counsel for respondents acknowledges that the reason for
16 the delay was within her control, but was nonetheless an inadvertent scheduling error. Respondents
17 have acted in good faith in swiftly responding to the Court’s order to show cause, conferring with
18 opposing counsel, and bringing their motion to file a late pleading and motion for an extension. The
19 Court therefore finds that respondents’ failure to file an answer in compliance with the Court’s order
20 of July 23, 2015 was due to excusable neglect. The Court further finds good cause to grant
21 respondents’ motion to file a late pleading and motion for an extension in which to file an answer.

22 **IT IS THEREFORE ORDERED** that the order to show cause (ECF No. 77) is **HEREBY**
23 **DISCHARGED.**

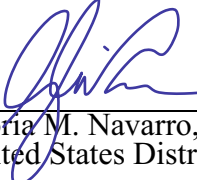
24 **IT IS FURTHER ORDERED** that respondents’ motion to file a late pleading (ECF No.
25 79) is **GRANTED.**

26
27
28 ¹ Respondents also filed an errata to the motion to file a late pleading. (ECF No. 81).

1 **IT IS FURTHER ORDERED** that respondents' motion for an extension of time in which
2 to file an answer to the remaining exhausted grounds of the original federal petition (ECF No. 80) is
3 **GRANTED.** Respondents' answer shall be filed on or before **November 16, 2015.**

4 **IT IS FURTHER ORDERED** that at the same time that the answer is filed, respondents
5 **SHALL SEND** to the **Reno** Division of this Court, courtesy (paper) copies of all exhibits
6 previously filed in this action. Courtesy copies shall be mailed to the Clerk of Court, 400 S.
7 Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the
8 mailing address label.

9 Dated this 1 day of October, 2015.

10
11
12 
13 _____
14 Gloria M. Navarro, Chief Judge
15 United States District Court
16
17
18
19
20
21
22
23
24
25
26
27
28